IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPEAL NO.1138 OF 2002

The State of Maharashtra .... Appellant.

Vs.

Jeetendrakumar Vijaypratap Yadav .... Respondent.

Mrs.M.M.Deshmukh, APP for the Appellant/State.
Mr.Vishwanath Talkute, adv. for the Respondent.

CORAM : J.H.BHATIA, J.

DATE : JUNE 13, 2007.

ORAL JUDGMENT:

1. This is an appeal preferred by the State for enhancement of sentence awarded to the accused/respondent by J.M.F.C., Vashi, Navi Mumbai in Summary Criminal Case No.704 of 2000.

2. To state in brief, P.W.1 Dr.Dinesh B. Lamba and his fiancee Sheetal Kochar, who was also medical practitioner, were to be married on 19-2-2000. They had been to C.B.D. on a scooter to see the dispensary where they proposed to work after marriage. Thereafter, they were returning on the scooter. Dr.Dinesh was driving it and Sheetal was the pillion seat. At about 6.15 p.m. scooter was stopped at Uran Phata signal. They were proceeding from the side of Panvel towards Sion. When the scooter was standing at the signal, a tanker no.MH-04 AL-1699 came from behind, i.e. Panvel side in high speed and it gave dash to the scooter, due to which Dr.Dinesh

and Dr.Sheetal both fell down. She was run over under the right side front wheel of the tanker. She suffered serious injuries. Immediately she was taken to the hospital, where she was declared dead. Dr.Dinesh also suffered grievous hurts. After investigation, the respondent, who was driver of the said tanker was prosecuted for the offences punishable under Sections 304A, 279, 337 of the I.P.C. and under Section 184 of the Motor Vehicle Act. After trial, the learned trial Court held him guilty for the offences punishable under Sections 304A, 279 of the I.P.C. as well as under Section 184 of the Motor Vehicle Act. Accused was sentenced to undergo S.I. for one year and to pay fine of Rs.2,000/- for the offences punishable under Section 304A. He was also sentenced to undergo S.I. for six months for the offence punishable under Section 279 of the I.P.C. and for the offence punishable under Section 184 of the Motor Vehicle Act, he was sentenced to pay fine of Rs.1,000/- and in default to undergo S.I. for one month.

3. Being not satisfied with the sentence awarded by the trial Court, the State has preferred this appeal for enhancement of sentence.

4. Heard Mrs.Deshmukh the learned APP for the State and Mr.Talkute the learned counsel for the respondent. Order of conviction and sentence was passed on 29-7-2002

and this appeal was preferred in the same year. However, this appeal came up for final hearing recently. On the last date, the learned APP was requested to find out whether the accused had also preferred any appeal against the conviction. Today, the learned counsel for both the parties inform that the accused had preferred the appeal against conviction and that appeal was dismissed. Mr.Talkute the learned counsel for the respondents also makes a statement that the appeal was dismissed within a short time and thereafter, the respondent had preferred Revision Application before this High Court. That Revision Application was also rejected. Thereafter the respondent had preferred Special Leave Petition before the Supreme Court on the point of sentence. That Special Leave Petition was also dismissed long back. He makes a statement that the accused has already undergone complete sentence as awarded by the trial Court.

5. It was really unfortunate that the young lady Dr.Sheetal died in that incident, just 8 days before her marriage. The learned Trial Court found the accused was guilty of causing her death by driving tanker rashly and negligently and convicted him. The learned trial Court also found the accused guilty of driving the tanker so rashly as to endanger human life. Therefore, question is only about sentence. The offence under Section 279 of the I.P.C. is punishable with provides maximum sentence of imprisonment of either description, which may extend

to six months or with fine which may extend to Rs.1,000/- or with both. For this offence, the learned Magistrate awarded maximum sentence of imprisonment prescribed by law, i.e., six months. The offence punishable under Section 304A of the I.P.C. carries imprisonment of either description, which may extend to two years, or with fine, or with both. For this offence, the learned Magistrate awarded S.I. for one year and also imposed fine of Rs.2,000/-.

6. Taking into consideration the circumstances, maximum sentence prescribed by the law and term of imprisonment of one year awarded by the trial Court, it can not be called disproportionate to the nature of the offence. However it appears that the learned Magistrate should have awarded Rigorous Imprisonment instead of Simple Imprisonment. but by this time, as pointed out earlier, the accused has already undergone the sentence awarded by the trial Court and now the S.I. already undergone by him can not be converted into R.I. Therefore, I do not find any reason or justification for enhancing the sentence or to convert the nature of the sentence from S.I. into R.I.

7. Before concluding it must be noted that in cases where accused is convicted by the learned Magistrate or Chief Judicial Magistrate or Assistant Sessions Judge and where the appeal against conviction lies before the

Sessions Judge and the State prefers an appeal for enhancement of sentence, office of the Public Prosecutor should immediately find out if any appeal against conviction has been preferred by the accused and if it is so, the Public Prosecutor/Additional Public Prosecutor should immediately request the High Court to call the appeal pending before the Sessions Court against the conviction so that the appeal preferred by the accused as well as appeal preferred by the State may be heard and disposed off together, and the possibility of conflict in decisions of two Courts may be avoided. The Public Prosecutor and the Additional Public Prosecutors should take note of this for future.

8. Taking into consideration the above circumstances, appeal stands dismissed.

[J.H.BHATIA, J.]